



Stand-Alone Missions of Opportunity Pre-Proposal Conference

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Export Control Compliance: Part of the NASA Mission

- “It is NASA policy to ensure that exports and transfers of commodities, technical data, or software to foreign persons are carried out in accordance with United States export control laws and regulations, and Administration and NASA policy.”

(NPD 2190.1, Section 1.a. (May 24, 2001))

- “We want to maximize the benefits of our international efforts while ensuring that we comply with U.S. export control laws and regulations.’ This is the personal responsibility of each employee.”

(NPR 2190.1, Section P.1. (April 10, 2003))

Export control compliance is everyone’s job at NASA



NASA's Export Control Program

- Formally instituted in November 1995, in close cooperation with the Departments of State and Commerce
 - Perhaps the U.S. Government's first Agencywide Export Control Program
 - NASA Policy Directive 2190.1: *"The NASA Export Control Program"*
 - NASA Procedural Requirements 2190.1: *"The NASA Export Control Program"*
- Agency export control policy is centralized in a single office at NASA Headquarters and operated Agencywide under standardized procedures
- 21 Export Control Administrators and Counsel – appointed by NASA Senior Management – in place at each NASA Center
 - NASA's experts on export control matters

NASA's Export Control Program supports responsible implementation of the Space Act, U.S. Space Exploration Policy, and U.S. National Space Policy



Key Export Control & Nonproliferation Principles

- Compliance with Primary Export Control Laws and Regulations
 - Export Administration Act -- Export Administration Regulations (EAR)
 - Arms Export Control Act -- International Traffic in Arms Regulations (ITAR)
 - 10 CFR 810 Department of Energy regulations
- U.S. Non-Proliferation and Export Control Policy & Space Transportation Policy
- P.L. 109-112 – Iran, North Korea, & Syria Non-Proliferation Act
 - Restricts extraordinary payments to certain Russian entities in connection with human space flight activities, including the ISS
- P.L. 106-391 – NASA Authorization Act of 2000
 - Requires NASA certification to Congress for activities with Chinese (PRC) entities involving spacecraft, spacecraft systems, launch systems, or scientific or technical information. P.L. 101-246 also restricts activities with PRC





Space Policies

- U.S. Space Exploration Policy:
 - “Promote international and commercial participation in exploration to further U.S. scientific, security, and economic interests . . . Pursue opportunities for international participation to support U.S. space exploration goals.”
- U.S. National Space Policy:
 - “pursue . . . international cooperation with foreign nations . . . on space activities that are of mutual benefit and that further the peaceful exploration and use of space”
 - “As a guideline, space-related exports that are currently available or are planned to be available in the global marketplace shall be considered favorably.”
- U.S. National Space Transportation Policy:
 - “Ensure the capability to access and use space in support of national and homeland security, civil, scientific, and economic interests.”
 - Strongly encourages the use of U.S.-manufactured launch vehicles for U.S. Government payloads, and subjects the use of foreign launch vehicles to Governmental review & coordination requirements.



U.S. Nonproliferation & Export Control Policy

The United States will continue to oppose missile programs of proliferation concern, and will exercise particular restraint in missile-related cooperation. We will continue to retain a strong presumption of denial against exports to any country of complete space launch vehicles or major components.

The United States **will not support the development or acquisition of space-launch vehicles** in countries outside the MTCR (*Missile Technology Control Regime*).

For MTCR member countries, **we will not encourage new space launch vehicle programs, which raise questions on both nonproliferation and economic viability grounds**. The United States will, however, consider exports of MTCR-controlled items to MTCR member countries for peaceful space launch programs on a case-by-case basis . . .



The International Traffic in Arms Regulations (ITAR)*

22 CFR 120-130

*Updated via Federal Register Notices

<http://www.pmddtc.state.gov/>



United States Munitions List (USML) – 22 CFR 121

- I - Firearms
- II - Artillery Projectors
- III - Ammunition
- ****IV - Launch Vehicles, etc...***
- ****V - Explosives, Propellants, Incendiary Agents and Their Constituents***
- VI - Vessels of War and Special Naval Equipment
- VII - Tanks and Military Vehicles
- VIII - Aircraft and Associated Equipment
- IX - Military Training Equipment
- X - Protective Personnel Equipment
- XI - Military Electronics
- ****XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment***
- ****XIII - Auxiliary Military Equipment***
- XIV - Toxicological Agents and Equipment and Radiological Equipment
- ****XV - Spacecraft Systems and Associated Equipment***
- XVI - Nuclear Weapons Design and Related Equipment
- XVII - Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated
- XVIII - Directed Energy Weapons
- XIX - Reserved
- XX - Submersible Vessels, Oceanographic and Associated Equipment
- XXI - Miscellaneous Articles



Key Export Control Definition – ITAR

- Important ITAR Definition
 - “Defense Article” - any item on the U. S. Munitions List (USML), including “technical data”.
 - Note: Contrary to popular opinion, **Defense Articles are not exclusively “military” items**; (e.g., with the exception of the Space Station, all *spacecraft* are “Defense Articles”; the JWST, Hubble, Swift, Fermi, are all “Defense Articles”, etc.)
 - Note: A University submitted a commodity jurisdiction to State Department which resulted in reiteration that all scientific instruments that are designed or modified for spacecraft are considered defense articles on the USML under Category XV(e) Spacecraft components.



The ITAR in Civil Space

ITAR Defense Service Exemptions

- Except for the University exemption, a DOD bid proposal exemption, and the Canadian exemption, don't bother looking for "defense service" exemptions
- And be mindful that **a Technical Assistance Agreement is required** even if assistance on a defense article **involves 100% public domain information**



Licenses v. Exemptions

Licenses

- NASA seeks and obtains **ITAR** export licenses prior to effecting an export
- Export licenses are issued by the Dept of State for the export of “**defense articles**”. Most frequently used **ITAR** license type by NASA:
 - DSP-5 - Permanent Export License (for Unclassified Defense Articles)
- When required, NASA licenses are obtained per our internal Export Control Program (ECP), contact local export officials for procedures

License Exemptions

- As a government agency, NASA enjoys certain license exemptions not available to industry
- These exemptions do not apply in all circumstances and **never** when dealing with “**foreign persons**” of **proscribed** countries (22 CFR 126.1)
- The **ITAR** contains numerous **exemptions*** to licensing requirements, **but not to the fact that an item is subject to control**
 - *Use of **exemptions** is pursuant to the specific provisions of the **ITAR**, the **NASA ECP** and the **NASA/Foreign Partner International Agreement**



The International Traffic in Arms Regulations (ITAR)

Proscribed Countries - 22 CFR 126.1

- If a country appears on the “proscribed country” list, it is (generally) U.S. policy to deny licenses, or other approvals, associated with exports and imports of defense articles and defense services, destined for or originating in that country
- **ITAR** License Exemptions are trumped if a “**foreign person**” from any of these countries is involved; i.e., a license must be applied for.



ITAR Proscribed Countries – 22 CFR 126.1

- **AFGHANISTAN (case by case)**
- **BELARUS**
- **BURMA**
- **CHINA (PRC)**
- **CONGO (case by case)**
- **CUBA**
- **CYPRUS**
- **ERITREA**
- ***FIJI**
- **HAITI**
- ***INDONESIA (case by case)**
- **IRAN**
- **IVORY COAST**
- **IRAQ (case by case)**
- **LEBANON**
- **LIBERIA**
- **LIBYA (case by case)**
- **NORTH KOREA**
- ***PALESTINIAN AUTHORITY**
- **RWANDA (case by case)**
- **SIERRA LEONE**
- **SOMALIA**
- **SRI LANKA**
- **SUDAN**
- **SYRIA**
- ***THAILAND**
- **VENEZUELA**
- **VIETNAM**
- **YEMEN**
- **ZIMBABWE**

* Department of State has published restrictive guidance regarding these countries/entities, Jan 2008 ITAR Handbook notes, 22CFR §126.1.



The ITAR in Civil Space

Commonly-used ITAR License Exemptions

123.4(a) & (b)	Temporary imports
123.16(b)	Exports of parts, components, models
125.4(b)(1)	Technical data exports directed by DOD
125.4(b)(3)	Technical data exports directed by U.S. Gov agency
125.4(b)(5)	Technical data exports for lawfully exported articles
125.4(b)(7)	Technical data returned to sender
125.4(b)(10)	Technical data disclosed to university employees
125.4(b)(11)	Technical data authorized by State Department Directorate for Defense Trade Controls written exemption
125.4(b)(13)	Publicly available data about defense articles
125.5(c)	Plant visits
126.4(a)	Exports by or for U.S. Gov agency
126.4(c)	Imports/Exports for use by USG agency abroad
126.5	Canadian Exemptions



University Exemptions

- University Exemption 123.16
 - Articles exported from accredited US institutions of higher learning to institutions of higher learning in NATO, major non-NATO ally, ESA, or EU countries, only nationals exclusively from those countries can be involved
 - Everything published, fundamental research
- University Exemption 125.4(b)(10)
 - Disclosures by universities in the U.S. to bona fide university employees
- University Exemption 125.4(d)(1)
 - Defense services for the items identified in §123.16(b)(10) of this subchapter exported by accredited U.S. institutions of higher learning...



NASA's International Agreements

- NASA's International Agreements - the basis for NASA foreign cooperative (or reimbursable) activity
 - define the responsibilities of the parties, scope of the work to be performed, & the terms and conditions under which the cooperation will be effected
- All NASA International Agreements contain a clause on transfers of controlled goods & data
- NASA's International Agreements do **NOT** trump export control laws & regulations

An International Agreement does not replace contractor's need for a TAA or Technical Assistance Agreement



Closing

- The Department of State is the regulatory authority for defense articles and defense services.
<http://www.pmddtc.state.gov/>
- The Department of Commerce is the regulatory authority for dual-use items. <http://www.bis.doc.gov/>
- The NASA Export Control Program is at
<http://www.hq.nasa.gov/office/oer/nasaecp/index.html>

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